PT 03-7
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

HYGENIC INSTITUTE, APPLICANT,	**Nos.**	**01-PT-0073 (00-50-0094)**
v.	**P.I.N:**	**18-03-339-000**
DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS		

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Douglas A. Gift of Herbolsheimer, Lannon, Henson, Duncan & Reagan on behalf of the Hygenic Instiute (the "Applicant"); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This proceeding raises the following issues: (1) whether real estate identified by LaSalle County Parcel Index Number 18-03-339-000 (the "subject property") was owned by an "institution of public charity," within the meaning of 35 **ILCS** 200/15-65(a), during the 2000 assessment year; (2) whether any part of the subject property was "actually and exclusively used for charitable or beneficent purposes," as required by 35 **ILCS** 200/15-65 during the 2000 assessment year; (3) whether that portion of the subject property that applicant leased to the La Salle County Health Department was "leased or otherwise used with a view to a profit," in violation of 35 **ILCS** 200/15-65, during the 2000 assessment year; and, (4) whether that portion of the

subject property that applicant leased to the Department of Veteran's Affairs was "leased or otherwise used with a view to a profit," in violation of 35 **ILCS** 200/15-65, during the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the La Salle County Board of Review (the "Board") on November 30, 2000. The Board reviewed this Application and recommended to the Department that the requested exemption be granted *in toto*. Dept. Ex. No. 1. The Department, however, rejected the Board's recommendation by issuing a determination, dated July 26, 2001, which found that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 2. Applicant filed a timely request for hearing as to this denial and later presented evidence at an evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be affirmed.

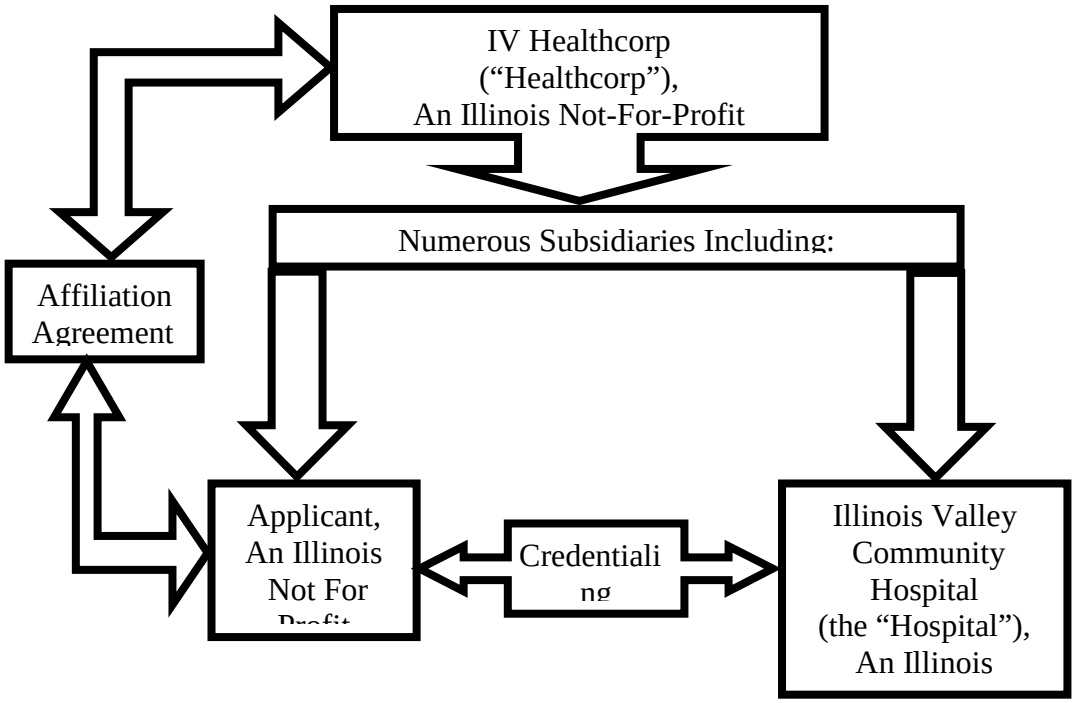
FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 2.
3. The subject property is located in LaSalle, IL and improved with a 4,400 square foot health care facility. Dept. Ex. No. 1; Tr. p. 37.

B. Applicant's Organizational Structure

4. Applicant's basic organizational structure, and its relationships to various other entities, is as follows:



Applicant Ex. Nos. 4, 7, 8, 10; Tr. pp. 47-48.

5. Healthcorp's Articles of Incorporation recite that its organizational purposes include the following:

> A. Establishing, owning, conducting, managing and maintaining hospitals, nursing homes, ambulatory surgical treatment centers and such other ancillary medial treatment facilities as may be used for the prevention, care, treatment and healing of human ailments and diseases of all kinds and descriptions, provided that such endeavors shall not include engaging in the practice of medicine;
>
> B. Supporting and coordinating activities of its various subsidiaries, all of which are not-for-profit corporations affiliated with Healthcorp as those corporations pursue their charitable, educational and benevolent activities in the fields of healthcare, health education and training, scientific research, health facilities, health management, and in other related fields[;] and,

C. Investing in, coordinating and supporting for-profit activities or other proprietary organizations affiliated with Healthcorp that engage in for-profit activities consistent with and in furtherance of the charitable, educational and scientific purposes of Healthcorp.

Applicant Ex. No. 8.

6. Healthcorp is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination issued by the Internal Revenue Service on December 16, 1989. Applicant Ex. No. 9.

7. Applicant did not submit any documentary evidence establishing Healthcorp's financial structure.

8. Applicant's by-laws recite that its organizational purposes include:

   A. Engaging in health care services and activities that include sponsoring, developing, managing and operating clinics and other entities that are useful or necessary to providing health care services;

   B. Investing in for-profit activities that further the charitable, educational and scientific purposes for which the applicant is organized, provided that such activities shall not include the practice of medicine; and,

   C. Supporting, aiding and conferring benefits on Healthcorp, Inc. and organizations affiliated therewith so as to enable those organizations to pursue their charitable, educational and scientific activities.

Applicant Ex. No 5.

9. Applicant's by-laws further provide, *inter alia*, that the members of its corporation "shall be those persons who are the Members of the Board Directors of IV Healthcorp, Inc." *Id*.

10. Applicant is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination issued by the

Commissioner of Internal Revenue in on September 18, 1942. Applicant Ex. No. 6.

11. Applicant did not submit any documentary evidence establishing its own financial structure.

12. Applicant's affiliation agreement with Healthcorp, dated April 30, 1996, provides, *inter alia*, that: (a) applicant is to function as a subsidiary corporation of Healthcorp; (b) the members of applicant's corporation "shall be those persons who are the corporate directors of Healthcorp …[;]" (c) applicant shall continue to exist as an Illinois not-for-profit corporation, on the condition that its organizational documents may be amended to provide for a name change that reflects applicant's affiliation with Healthcorp; (d) applicant's present governing board shall remain intact and in control of applicant's business affairs for a period of three years following the date of the merger; (e) the precise extent to which applicant's board of directors exercise direction and control over its business affairs may be altered through appropriate revisions to applicant's organizational documents; and, (f) notwithstanding any other provision related to direction and control, applicant's board of directors shall retain the sole discretion to determine the manner in which applicant's financial assets are "used to promote, make available, and dispense public health for the people of LaSalle-Peru Township and the Illinois Valley…[.]" Applicant Ex. No. 7.

13. The Hospital's Articles of Incorporation recite that its organizational purposes include:

    A. Establishing, owning, conducting, managing and maintaining hospitals, nursing homes, ambulatory surgical treatment centers and such other ancillary medial treatment facilities as may be used for the prevention, care, treatment and healing of human ailments and diseases of all kinds and descriptions, provided that such endeavors specifically exclude engaging in the practice of medicine;

    B. Organizing, operating and maintaining one or more non-denominational, not-for-profit hospitals in the LaSalle-Peru area; and,

    C. Promoting and carrying on educational, scientific and research activities that are ancillary to providing quality health care services at the facilities it operates.

Applicant Ex. No. 10.

14. The Hospital is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination issued by the Internal Revenue Service in March 25, 1977. Applicant Ex. No. 11.

15. The Hospital obtained a property tax exemption for real estate identified by LaSalle County Parcel Index Number 17-16-307-010 pursuant to the terms of the Departmental Determination in Docket No. 90-50-45, issued by the Local Government Services Bureau on June 7, 1991. Applicant Ex. No. 12.

16. Applicant's credentialing agreement with the Hospital is, in substance, an information sharing agreement that allows applicant and the Hospital to exchange certain human resource, credentialing and other information that pertains to Hospital medical professionals who contract to provide medical services at applicant's clinic. Applicant Ex. No. 7.

C. Applicant's Ownership and Use of the Subject Property

17. Applicant acquired ownership of the subject property by means of "Deed Record 699," dated November 19, 1932. Applicant Ex. No. 1.

18. The subject property is located in LaSalle, IL and improved with a 4,400 square foot health care facility. Dept. Ex. No. 1; Tr. p. 37.

19. The improvement is divided into the following areas:

Size (Sq. Ft.)	**% OF IMPROVEMENT**	**USE**
528	12%	• Applicant leases entire area to the Department of Veteran's Affairs (the "VA"), which uses it for an outreach clinic on a full time basis.
1,332	30%	• Applicant also leases this area to the VA, which shares this space with applicant.

120	3%	• Applicant leases this area to the LaSalle County Health Department (the "Health Department"), which uses it to administer W.I.C.[1] and other public health programs on a full time basis.
120	3%	• Applicant also leases this area to the Health Department, which uses it for office space two days per week.
144	3%	• Applicant also leases this area to the Health Department, which uses it for office space two days per week.
2,156	49%	• Applicant does not lease this area to any other entity; • Applicant provides various health-care related services in this space.

Applicant Ex. Nos. 13, 14; Tr. pp. 37-41.

20. Applicant offered the following healthcare related services at the subject property during the 2000 assessment year:[2] (a) tuberculosis screening; (b) testing for exposure to sexually transmitted and other communicable diseases; (c) inoculations, routine physical examinations and other direct, non-emergency, primary care services; (d) case management, or referrals to other health care providers in its area. Tr. pp. 62-64, 72-73.

1. W.I.C. is an acronym for "Women, Infants and Children," a supplemental nutrition program for pregnant women with low incomes and their children. Tr. pp. 76-77.

2. All of the services described in this and all subsequent findings of fact shall be understood to be services offered during the 2000 assessment year unless context clearly specifies otherwise.

21. Applicant also offered various clinical, treatment and laboratory services in conjunction with the Health Department at the subject property.[3] Tr. p. 63

22. Applicant received patient referrals for its services from social service agencies, local hospitals, local school districts and private medical providers. Tr. pp. 65.

23. Some of applicant's patients are eligible for Medicaid or other forms of publicly-funded insurance. Tr. 49.

24. Applicant charged fees for all of its services except case management, and it requested payment at the time of service.[4] Tr. pp. 49, 52, 73.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted Sections 15-65(a) and 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*., which provide as follows:

200/15-65. Charitable Purposes

> § 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) institutions of public charity.

3. The exact nature of these services and the extent to which applicant provided such services is unspecified in the record.

4. Applicant did not introduce any fee schedules or other evidence demonstrating its fee amounts for 2000.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are strictly construed, with all doubts and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

All of the debatable questions herein center around the legal sufficiency of applicant's proofs. These questions are raised because applicant, which bears the burden of proof as to all elements of its exemption claim, must satisfy a standard of clear and convincing evidence in order to sustain that burden. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994). For the following reasons, I conclude that applicant failed to satisfy its burden of proof.

1. Exempt Ownership

A. Failures of Proof

The first element applicant must prove is that the subject property is owned by a duly qualified "institution of public charity." 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather,

derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d at 156-157.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

This applicant's primary obstacle to obtaining exempt status under the above criteria is, as noted above, lack of proof. Specifically, the record is totally devoid of any statistics or other similar documentary evidence proving the exact extent to which applicant waives its fees for those who can not afford to pay. Nor does the record contain any documentary evidence proving the precise extent to which applicant employs sliding scales to reduce such fees in cases of demonstrated financial need. Absent this evidence, I am unable to discern whether the primary purpose of applicant's operations is to: (a)

service the non-exempt interests of those who can afford to pay full fees for the healthcare services they receive; or, (b) reduce the State's burden by servicing the healthcare needs of those who cannot.

Applicant did provide some generalized testimony indicating that it does grant fee waivers and utilize sliding scales that accommodate those who are unable to pay. Tr. pp. 53-54, 74-76, 84-85. However, none of this testimony identified the precise extent to which applicant actually employed such devices during 2000. Tr. pp. 53-54, 86. Due to these omissions, and the documentary deficiencies on this point as noted above, the evidence by which applicant sought to establish that its operations are "exclusively" or primarily "charitable" is unacceptably conclusory.

Such conclusory evidence fails to satisfy the clear and convincing standard necessary to sustain applicant's burden of proof. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, *supra*. If I concluded otherwise, then any entity, including one that dispenses very minimal amounts of "charity," could qualify for exempt status simply by stating that it accommodates the needy in some fashion. This in turn would relax the evidentiary standards in property tax cases to levels well below those required by state constitutional mandate in the first instance and necessary to protect public treasuries from unwarranted lost revenue costs, in the second. Therefore, although applicant is correct in asserting that merely charging fees does not destroy exempt status, (Small v. Pangle, 60 Ill.2d 510, 518 (1975)), applicant's failure to prove the extent to which it actually waives or reduces fees is fatal to its current exemption claim.

Even assuming, *arguendo*, that applicant had cured these evidentiary deficiencies, the record fails to disclose what, if any, means applicant employed to make the public

aware of its fee waiver and sliding scale policies. In this respect, the present case is similar to Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281 (2nd Dist. 1987).

The health care facility at issue in Highland Park Hospital was one that circulated advertisements to promote the center's services. Among other things, these advertisements described the available services and set forth appellant's hours. They also advised that care was available without appointment and that services were provided on a low-cost basis when compared to other facilities. However, the advertisements did not mention that free care was available to those unable to pay.

The court viewed this omission as a failure of proof because it raised doubts as to whether members of the general public in fact knew free care was available at the facility. Highland Park Hospital at 280. Here, applicant's director, Lynn Sheedy, testified that applicant follows an "understood"[5] policy of not charging for information and referrals. However, Ms. Sheedy failed to specify: (a) by whom this policy is understood, and, (b) how applicant disseminates information about this policy, externally or internally.

If Ms. Sheedy was referring to applicant's management, then applicant's policy amounts to an internal managerial directive that, by its very nature, is unknown to the

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5. Ms. Sheedy's testimony on this point was as follows:

> Q. [by counsel for the Department] Do you have any documents with you that Mr. Gift would have that show you don't charge certain charges to patients or anything like that?
>
> A. Do I have any documents? I'd don't think I have anything that would specifically say we are not charging for immunizations or we don't charge for our information referral pieces, that we don't charge for the case management. I don't have anything like that, I'm sorry. It's an understood policy, especially on the information and referral.

Tr. p. 86.

public at large. If, however, Ms. Sheedy was referring to the general public, then applicant failed to support her testimony with documents which inform the public that applicant makes accommodations for those who are unable to pay. Highland Park Hospital, *supra*. In either case, any ambiguities or deficiencies in Ms. Sheedy's testimony must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Therefore, applicant has failed to sustain another element of its burden of proof.

At least one court has found community outreach programs to be an acceptable alternative to advertisements which advise the public that applicant accommodates those who are unable to pay. Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000). However, the record in Randolph Street Gallery contained specific and detailed evidence establishing that applicant engaged in extensive community outreach throughout the tax years in question. Randolph Street Gallery, *supra*, at 1062, 1068.

This record contains no such evidence, as it fails to reveal the number or the nature of community outreach programs that applicant held during 2000. Nor does it indicate how many persons or organizations applicant serviced through these programs. *See*, Randolph Street Gallery, *supra*, at 1062. Absent this evidence, applicant's outreach programs cannot be compared to those that the court found indicative of exempt status in Randolph Street Gallery.

It also bears noting that the Randolph Street Gallery applicant presented extensive documentary evidence concerning its financial structure. Randolph Street Gallery, *supra*,

at 1067. This record lacks such documentary evidence, which is necessary to determine whether applicant "derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter." Korzen, *supra*.

Applicant did, however, present generalized testimony indicating that: (a) it derives revenue from patient fees, governmental agencies, "charitable" donations,[6] farming income, rentals received from its leases with the Health Department and VA and subsidies from its affiliate Hospital; (b) it operates at a deficit each year; (c) the Hospital provides "a large portion" of the funds to offset this deficit. Tr. pp. 34, 47-49.

This testimony is unacceptably conclusory because it fails to disclose critical information about applicant's financial structure, such as the extent to which relies on each of its funding sources. If applicant derives most of its funding from patient fees and farming income, then one can infer that applicant operates primarily for the non-exempt purpose of providing health care services to those who can afford to pay such fees in full. *Accord*, Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App.3d 455 (2nd Dist. 1995). As such, any "charity" applicant dispenses is probably an incidental by-product of those non-exempt operations. Rogers Park Post No. 108 v. Brenza, *supra*.

Applicant's failure to introduce appropriate financial statements leaves the record devoid of evidence as to the extent of any financial losses or opportunity costs that applicant may incur by accepting Medicare assignments, waiving fees or employing sliding scales. Consequently, applicant has failed to prove that its financial structure is consistent with that of an "institution of public charity."

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6. The record does not specify the source or sources of these "charitable" contributions.

Applicant seeks to cure this failure of proof through testimony indicating that it is financially dependent on the Hospital to some extent. Tr. pp. 34, 47-49. Once again, however, applicant failed to support this testimony with appropriate documentation that discloses the precise extent to which applicant is financially dependent on this Hospital. Therefore, I conclude that the testimony on this point and all of the other points identified above fails to rise to the level of clear and convincing evidence necessary to sustain applicant's burden of proof. Accordingly, the Department's determination that the subject property is not owned by a duly qualified "institution of public charity" should be affirmed.

B. Other Considerations Affecting Lack of Exempt Ownership

Principles articulated in Southern Illinois University Foundation *et al*. v. Booker, 98 Ill. App.3d 1062 (5th Dist. 1981) ("SIU") provide additional support for concluding that the subject property is not in exempt ownership. The property at issue in the SIU case was a family housing facility for low and moderate income students attending Southern Illinois University (the "University") and their families. *Id*.

The University did not hold title to this property because it was legally prohibited from incurring long term indebtedness necessary to finance the initial acquisition and construction. *Id*. at 1063, 1065, 1067. This prohibition did not apply to the appellant Foundation, which acquired the requisite financing, assumed legal title and then leased the property back to the University's governing board, to which the Foundation was to reconvey title when the mortgage was retired. SIU at 1065-1067.

The Foundation undertook these obligations pursuant to language in its organizational documents which provided that its corporate purposes included authority

to "buy, sell, lease, own, manage, convey and mortgage real estate in a manner specified by the Board of Trustees of Southern Illinois University [and] to act as the business agent of the said Board in respect to … acquisition, management, and leasing of real property and buildings." *Id.* at 1064.

The Foundation exercised these powers under direction of a governing board that consisted in part of various high-ranking University officials, including the University president or his designee. *Id.* at 1064-1065. However, daily managerial responsibilities fell under jurisdiction of the University's Housing Office, which managed the property "in the same manner as all other on-campus University student housing facilities." *Id.* at 1066.

The statute at issue in SIU provided for the exemption of all property owned by the State of Illinois. Ill. Rev. Stat. ch. 120, ¶ 500.1, now 35 **ILCS** 200/15-55.[7] The taxing authority appellees argued that the property was not in exempt ownership because the State did not hold legal title thereto; the appellant Foundation responded that the Foundation's close relationship with the University placed equitable ownership in the State. SIU at 1064, 1067.

The court held that the applicant Foundation was not "readily separable from the University, and consequently, the State." *Id.* at 1071. Consequently, the key indices of ownership, control of the property and the right to enjoy its benefits, rested in the University. *Id.* at 1067-1071. Hence:

> Although the Foundation is a corporate entity legally distinct from that of the University [sic], the function of the one is expressly "to promote the interests and welfare" of the other and some of the highest officers of the University are required, under the by-laws

7. Section 15-55 of the Property Tax Code, 35 **ILCS** 200/15-55, states, in relevant part, that "[a]ll property belonging to the State of Illinois is exempt." 35 **ILCS** 200/15-55.

> of the Foundation, to serve in some of the highest positions of the Foundation. Thus, a further reality of ownership of this property is the identification to a certain extent of bare legal title and the State as holder of the entire equitable interest. In this case, then not only does the Foundation hold but naked title to property controlled and enjoyed by the State, but a certain identity exists as well between the holder of naked title and the State. For these reasons, we hold the property exempt from taxation as property belonging to the State.

Id. at 1070-1071.

In order to apply these principles to the present case, one must analyze whether applicant, in its capacity as nominal titleholder, can readily be separated from any entity whose property would be tax exempt if that entity held legal title to the subject property or an equitable ownership interest therein. *Id*.

The documents that define applicant's relationship to its parent corporation, Healthcorp, do provide for Healthcorp's directors to serve on applicant's board. Applicant Ex. No. 7. They also provide that one of applicant's corporate purposes is to support Healthcorp and its affiliated organizations. Applicant Ex. No. 5. Thus, applicant's relationship to Healthcorp is similar in some respects to the one that created an equitable ownership interest in the SIU case. *See*, Applicant Ex. No. 7.

There are, nevertheless, at least two major differences in the two relationships. The SIU applicant took title to the property at issue for the sole purpose of enabling the University to overcome a specific legal prohibition that effectively prevented the University from obtaining title in its own name. SIU at 1067. That applicant was also legally obligated to reconvey the property to the University's governing board upon retirement of the mortgage. *Id*. at 1066, 1070. Consequently, it became logical for the

court to view the applicant's relationship to the University as that of a trustee holding title for a named beneficiary. *Id*. at 1070-1071.

This record fails to disclose that Healthcorp could not take title to the subject property in its own name for legal reasons. Nor does the record reveal that applicant is under any legal obligation to convey the subject property to Healthcorp. Therefore, the record does not support the existence of a trust relationship between applicant and Healthcorp. Even if it did, the tax exempt status of the purported "beneficiary," Healthcorp, has not been established on this record.

The SIU applicant did not need to prove that Southern Illinois University qualified as a tax exempt entity because of the latter's status as a State-controlled public university. SIU at 1068. In contrast, Healthcorp is a not-for-profit corporation whose status as a privately controlled enterprise necessitates appropriate proof of exempt status. Although applicant did submit Healthcorp's Articles of Incorporation (Applicant Ex. No. 8), it failed to introduce evidence, such as financial statements establishing Healthcorp's financial structure.

Applicant also did not introduce any evidence proving the extent to which Healthcorp engages in "charitable" works by, for example, waiving or reducing fees for those who can not afford to pay full fees for the services they receive at the healthcare facilities that Healthcorp owns and operates. For this and all the above-stated reasons, I conclude that applicant's relationship to Healthcorp cannot be compared to the one found indicative of exempt ownership in the SIU case.

Applicant's relationship with the Hospital also fails to establish the requisite exempt ownership. The Department has recognized that the Hospital qualifies for exempt

status by exempting one of its facilities from real estate taxation. Applicant Ex. No. 8. However, unlike SIU, nothing in the record indicates that any of Hospital's directors serve on applicant's governing board. Furthermore, although applicant and the Hospital do maintain a credentialing agreement that allows them to exchange certain human resources, credentialing and other information that pertains to healthcare professionals who provide medical services at applicant's clinic, neither this agreement nor any other evidence of record calls for the Hospital to exercise any degree of managerial control over applicant's daily operations.

The record also does not contain any evidence proving that it was legally impossible for the Hospital to assume ownership of the subject property in its own name. Nor does the record indicate that applicant is under any legal obligation to convey the property to the Hospital. Therefore, the record does not support the existence of a trust relationship between applicant and the Hospital.

Based on the foregoing, I conclude that applicant has failed to prove that the subject property was in exempt ownership, as required by 35 **ILCS** 200/15-65(a) during the tax year in question. Therefore, the part of the Department's initial determination that pertains to lack of exempt ownership should be affirmed.

2. Lack of Exempt Use

Much of the above discussion regarding failures of proof applies with equal force to the statutory exempt use requirement, by which applicant must prove by clear and convincing evidence that the subject property is "exclusively" or primarily used for purposes that qualify as "charitable." Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796

(3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). However, it is important to recognize that applicant does not use the entire subject property for its own purposes.

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

This particular subject property is divided into the following "specifically identifiable" major area groupings: (a) areas that applicant uses for its own purposes; (b) areas that applicant leases to other entities, the Health Department and the VA, that use the demised areas for their own purposes; and, (c) other areas that applicant leases to the Health Department and VA that are used in part for applicant's own purposes and in part for Health Department or VA-related purposes.

The areas that applicant uses for its own purposes are the ones wherein applicant carries out its clinical operations. Applicant failed to prove that these operations qualify as "exclusively" charitable for the reasons set forth above. Therefore, it would be incongruous to conclude that applicant sustained its burden of proving that the areas in which it conducts these same operations satisfy the statutory requirement of being "exclusively" or primarily used for "charitable" purposes. 35 **ILCS** 200/15-65; Albion Ruritan Club v. Department of Revenue, *supra*; Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, *supra*.

The areas applicant leases to the VA and Health Department also fail to satisfy the statutory exempt use requirement for reasons articulated in Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983). The property at issue in Village of Oak Park was a parking lot that the appellee Village leased from a church and used for municipal purposes. *Id*. at 497.

The Village argued that its use of this property would have qualified as an exempt use if the Village owned the lot. *Id*. at 501. The court, however, disagreed, on grounds that the exemption provisions that applied to municipalities, such as the Village,[8] provided for an exemption that was based on ownership alone, rather than ownership and use.[9] *Id*. Therefore, the Village's mere leasehold interest in the lot rendered its use of the property legally insufficient to warrant exemption. *Id*. at 501-502.

I take administrative notice that the VA is an executive department of the United States Government organized pursuant to 5 U.S.C.A. §101 and 38 U.S.C.A. §301, *et seq*. Real estate owned by the United States is subject to exemption under Section 15-50 of the Property Tax Code, which states that "[a]ll property of the United States is exempt, except such property as the United States has permitted or may permit to be taxed." 35 **ILCS** 200/15-50.

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8. Those provisions were found in Ill. Rev. Stat. ch. 120, ¶500.6, which provided, in relevant part, for the exemption of "all property owned by a city or village located within the incorporated limits thereof, except such as heretofore has been leased or may hereafter be leased by such city or village to lessees who are bound under the terms of the lease to pay the taxes on such property." Ill. Rev. Stat. ch. 120, ¶500.6.

The current version of this exemption statute appears in 35 **ILCS** 200/15-60(c), a provision that, for present purposes, is identical in substance to the one contained in Ill. Rev. Stat. ch. 120, ¶500.6.

9. For analysis of property leased to an entity whose exemption required both exempt ownership and exempt use, *see*, Children's Development Center, Inc. v. Olson, 52 Ill.2d 322 (1972) (leasehold held by charitable organization, whose exemption required both ownership and use, held exempt) .

I further take administrative notice that Health Department is an instrumentality of LaSalle County, a governmental entity organized pursuant to the Counties Code, 55 **ILCS** 5/1-1001, *et seq*. The exemption statute pertaining to counties is found in Section 15-60(b) of the Property Tax Code, which provides for the exemption of "all public buildings belonging to any county, township, city, or incorporated town, with the ground on which the buildings are erected." 35 **ILCS** 15-60(b).

The word "of," which appears in Section 15-60, connotes an ownership requirement, (Methodist Old People's Home v. Korzen, *supra*), as does the phrase "belonging to," which appears in Section 15-50. Furthermore, neither Section 15-60(b) nor Section 15-50 contain any language mandating an exempt use. Consequently, both of these exemptions are based solely on ownership.

The VA does not own any of the space that it rents from applicant. Nor does the Health Department own any of the space that it rents from applicant. Accordingly, the portions of these leaseholds that the VA and Health Department use for their own purposes do not qualify for exemption under Village of Oak Park, *supra*.

Moreover, the portions of such leaseholds that the VA and Health Department share with applicant are not in exempt use because: (a) they are included within the non-exempt areas applicant leases to the VA and Health Department (Village of Oak Park, *supra*); (b) applicant is ultimately the primary user of these areas; and, (c) applicant failed to prove that the areas it uses for its own purposes satisfy the statutory requirement of being "exclusively" used for purposes that qualify as "charitable." *See*, *supra*, at pp. 21-22.

Based on the foregoing, I conclude that none of the areas contained within the subject property were "exclusively" or primarily used for charitable purposes, as required by 35 **ILCS** 200/15-65, during the tax year in question. Therefore, the Department's initial determination with respect to lack of exempt use should be affirmed.

In summary, applicant has failed to clearly and convincingly prove that the subject property was in exempt ownership and exempt use, as required by Section 15-65(a) of the Property Tax Code during the 2000 assessment year. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by LaSalle County Parcel Index Numbers 19-24-328-001-0040, 19-24-376-001-0060 and 19-24-327-005-0040 remain on the tax rolls for the 2000 assessment years.

January 23, 2003
Date

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Alan I. Marcus
Administrative Law Judge